

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 28, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP1252**

**Cir. Ct. No. 2012CV153**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

---

**CHRIS BRICKSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**DANIEL R. O'CONNELL, SR.,**

**DEFENDANT-RESPONDENT,**

**PAUL O'CONNELL, MARY LEE O'CONNELL, PEGGY POKEL,  
ANN PETERSON, SHARON O'CONNELL, THOMAS O'CONNELL, II,  
THOMAS O'CONNELL, III, PETER O'CONNELL, MICHAEL O'CONNELL,  
TIMOTHY O'CONNELL, JOSEPH O'CONNELL, ALICE O'CONNELL,  
NORMA O'CONNELL, KATHY HINTZ, JUDY DUBOIS AND  
MARK O'CONNELL,**

**DEFENDANTS.**

---

APPEAL from a judgment and an order of the circuit court for  
Marinette County: JAMES A. MORRISON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. This case requires us to interpret a novel agreement between tenants in common.<sup>1</sup> The circuit court concluded that a 1972 agreement executed by the seven purchasers of real property in Marinette County created a joint tenancy and that, as the last surviving member, Daniel O’Connell is entitled to sole and exclusive ownership. Chris Brickson, the son of one of the original purchasers, asserts the agreement was ineffective to create a joint tenancy.

¶2 We conclude that, based on the agreement’s language, the parties did not intend to create a joint tenancy. Instead, they agreed to a present waiver of their interest in the property upon death. As a practical matter, this arrangement leaves O’Connell as the sole remaining owner. Accordingly, we affirm, but on different grounds. See *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995) (we may affirm on grounds different than those relied on by the trial court).

## BACKGROUND

¶3 On September 15, 1969, Gene Brickson, together with six O’Connell brothers, including Daniel O’Connell, purchased property in Marinette County as tenants in common. The deed was recorded with the Marinette County Register of Deeds office.

---

<sup>1</sup> The parties have not directed us to any case dealing with an agreement like the one at issue here, nor has our independent research uncovered any.

¶4 In 1972, the parties executed a document entitled “Death Waiver.” The “Death Waiver” begins by identifying the property subject to the 1969 quitclaim deed. It then provides:

THIS INDENTURE, made this 1st day of August, 1972, regarding the above property (including buildings on same), is to make known in writing that the [grantees] of the aforementioned deed ... want only the surviving owners, in the event of death of any member, (excluding heirs of living or deceased members) to continue ownership of same.

Example: Ownership involves seven (7) members only, as so listed on the original deed. When a member owner dies, possession of said property and buildings shall be assumed and continued by the surviving six (6) members, then five (5) owner members, etc., until the last living member.

In a separate provision, the “Death Waiver” states that the heirs of each deceased member are entitled to only specified sums representing “what said deceased member has put into ownership of said property and buildings up to December 31st, 1971.” This provision continues, “[O]wnership in the name of each deceased party shall be discontinued, with deceased member’s name removed from the deed.” Finally, the signatories agreed to contribute \$5 per month for insurance, taxes, electricity, and general upkeep.

¶5 Brickson commenced this WIS. STAT. ch. 841 action for a declaration of interest in real property.<sup>2</sup> He sought a declaration that O’Connell has a one-seventh interest in the property, that he has a two-sevenths interest in the

---

<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

property,<sup>3</sup> and that the heirs of four other O’Connell brothers each have a one-seventh interest. Brickson also sought partition and sale of the property.

¶6 O’Connell answered, denied that Brickson had any interest in the property, and counterclaimed to quiet title and for slander of title. O’Connell later filed a motion for summary judgment, asserting the “Death Waiver” created a joint tenancy and that, as the sole survivor of the original seven signatories, O’Connell was entitled to exclusive ownership of the property.

¶7 The circuit court granted O’Connell’s motion. The court, in an oral ruling, observed that the document “is not certainly in standard form” and “leaves a lot to be desired ....” Nonetheless, it determined the “Death Waiver” clearly stated an intent to create a joint tenancy “by very accurately describing how a joint tenancy works ....” The court also determined the parties implicitly intended the “Death Waiver” to function as a conveyance, and the provisions regarding payments to heirs was severable and consistent with an intent to create a joint tenancy. Brickson appeals.

## DISCUSSION

¶8 We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Stoker v. Milwaukee Cnty.*, 2013 WI App 144, ¶11, 352 Wis. 2d 125, 841 N.W.2d 532. “Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* (citing WIS. STAT. § 802.08(2)).

---

<sup>3</sup> Brickson claims a two-sevenths interest because he obtained a quitclaim deed from the widow of one of the deceased O’Connell brothers to her one-seventh interest in the property.

¶9 The parties dedicate their arguments entirely to whether the “Death Waiver” is effective to create a joint tenancy in the real estate it references. O’Connell argues the agreement satisfies the requirements of the joint tenancy statute, WIS. STAT. § 700.19, while Brickson argues it does not. We believe the parties’ unwavering focus on joint tenancy misses the mark.

¶10 The “Death Waiver” is a contract, and as such we apply rules of contract interpretation. Contract interpretation generally seeks to give effect to the parties’ intentions. *Tufail v. Midwest Hospitality, LLC*, 2013 WI 62, ¶25, 348 Wis. 2d 631, 833 N.W.2d 586. Where the terms of the contract are clear and unambiguous, we construe the contract according to its language. *Id.*, ¶26. We give that language its plain and ordinary meaning, “consistent with ‘what a reasonable person would understand the words to mean under the circumstances.’” *Id.* ¶28 (quoting *Seitzinger v. Community Health Network*, 2004 WI 28, ¶22, 270 Wis. 2d 1, 676 N.W.2d 426). “The interpretation of a contract presents a question of law, which we determine independently of the conclusions rendered by the circuit court ....” *Id.*, ¶22.

¶11 By its terms, the “Death Waiver” does not accomplish an immediate change in the parties’ ownership. It is not written as a deed, and it does not include any terms indicating it was intended to grant or convey property upon execution. The signatories owned the property as tenants in common, and the “Death Waiver” anticipates they would continue to do so. The agreement’s terms providing heirs with compensation based upon a deceased member’s contributions to the property are consistent with continued ownership as tenants in common. If the parties intended to immediately create a joint tenancy, heirs would have no interest in the property upon death of a member.

¶12 What, then, did the parties intend the “Death Waiver” to accomplish? The language requiring a deceased owner’s interest to be “discontinued” and his name “removed from the deed” suggests the parties envisioned that his interest as a tenant in common would automatically extinguish upon death, subject only to a return of the funds that owner had contributed. The surviving tenants in common would have their interests increased proportionally. Thus, we conclude the “Death Waiver” accomplished a present waiver of any interest the tenants in common had in the property upon their death.

¶13 We therefore do not reach the question of whether the agreement is sufficient to create a joint tenancy under WIS. STAT. § 700.19. This case is governed exclusively by contract principles. We recognize, as a practical matter, our interpretation creates an ownership situation similar to joint tenancy because when only one signatory remains living, he will own the property outright by merger. *See Nixon v. Nixon*, 184 Wis. 200, 201 (1924). Nonetheless, that was clearly the parties’ intent, as expressed in the language of the agreement. We see no reason why the parties’ desired result cannot be achieved by a contract made during their lifetimes.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

